

## REMARKS/ARGUMENTS

Claims 1-10 remain in the application for further prosecution. Claims 1 and 6 have been amended. No new matter has been added. The amendments to the claims are supported by pages 10-15 of the specification.

### § 112 Rejection

Claims 1-10 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Office Action stated that the weighted probability is not defined in a manner in which one of ordinary skill in the art would understand and, thus, is indefinite. The Applicants respectfully disagree. Weighted probabilities are often used in the gaming industry and are fully understood by those having ordinary skill in the art. Furthermore, use of the weighted probability is described in at least one example in the specification, at pages 11-15. In the description, a math table is included that explicitly provides the percentages used for determining where the CPU chooses to move.

The Office Action further states that it is contradictory to have both a random choice and a weighted probability. Claims 1 and 6 have been amended to attempt to more clearly define the processor. Specifically, claim 1 states that the processor first performs "the receiving selections by the processor includes: (a) determining, via the processor, a best location of unoccupied ones in the array for placing the second symbol type, (b) applying a weighted probability to determine whether the second symbol type should be placed in the best location of the unoccupied ones, (c) if, after applying the weighted probability, multiple unoccupied ones of the locations are available to receive the second symbol type, applying, via the processor, a random determination as to

which of the multiple unoccupied ones of locations to place the second symbol type.” This limitation clarifies that the processor is first using a weighted probability to determine the location for the second symbol (based on the chance of winning) and then, if multiple unoccupied ones are still available to the processor, the processor randomly chooses between the multiple options. For example, assume that the processor applies a weighted probability of 85%, meaning that 85% of the time the processor chooses the best of the unoccupied ones to place the second symbol type and 15% of the time the processor chooses the worst of the unoccupied ones to place the second symbol type. After the weighted probability is applied, there are four locations that have the same chance of success (four unoccupied ones still available to the processor). In the example described above, if the person placed the first symbol type in the middle square, then the four corners are all equally the best location in the array, and the four remaining interior squares are all equally bad. The processor then randomly chooses between the four unoccupied ones that are still available to receive the second symbol type. Therefore, the Applicants believe that this amendment clarifies how a selection can be made using both weighted probabilities and random selections.

The above-described amendment is also believed to overcome the argument in the Office Action that it is “unclear how the weighted probability is varied and the affect [sic] such a variance would have if selection is previously defined to be random.” As stated above, claims 1 and 6 have now been amended to clarify that the selection is first chosen based on a weighted probability and if that weighted probability results in multiple unoccupied ones still being available to the processor, then a random selection is made between the multiple unoccupied ones. The weighted probability is varied by the processor, as is known in the art. For example, as described

in the specification, the processor makes a first selection based on a first weighted probability, for example 85%. After the player makes the next selection, the processor varies the weighted probability, for example to 90%, and then applies this second weighted probability to determine which location in the array to choose.

### **§ 103 Rejections**

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over International Publication No. WO 98/09259 to Bennett ("Bennett") in view of U.S. Patent No. 6,213,873 to Gasper et al. ("Gasper"). Bennett discloses a slot machine that allows a player to play tic-tac-toe against the machine. Gasper discloses a computer game that changes the skill level of the computer to match that of the person playing the game. Neither of these references teach all of the limitations disclosed in claims 1 and 6.

Claim 1 is directed to a method for playing a wagering game on a gaming machine controlled by a processor. Claim 1 further discloses receiving alternating instructions from the player and the processor and that when making its decision, "the receiving selections by the processor includes: (a) determining, via the processor, a best location of unoccupied ones in the array for placing the second symbol type, (b) applying a weighted probability to determine whether the second symbol type should be placed in the best location of the unoccupied ones, (c) if, after applying the weighted probability, multiple unoccupied ones of the locations are available to receive the second symbol type, applying, via the processor, a random determination as to which of the multiple unoccupied ones of locations to place the second symbol type." In other words, the processor of claim 1 chooses its moves first by using a weighted probability and then, if multiple unoccupied locations (or ones) are still available after making the weighted probability,

the processor randomly selects between the multiple unoccupied ones. Randomness in the decision making is not described at all in Gasper or Bennett. The processor in Gasper evaluates all the moves and chooses the best response possible. In order to handicap the processor when playing against less skilled players, Gasper varies the time allotted for the processor to evaluate and decide upon which move to make. Bennett does not describe how the processor chooses which spot to mark. Therefore, claim 1 is believed to be allowable over Bennett and Gasper.

Claim 6 is directed to a game of chance for a gaming device controlled by a microprocessor. The game of chance includes "a means for receiving alternating selections by the player and the receiving selections by the processor includes: (a) determining, via the processor, a best location of unoccupied ones in the array for placing the second symbol type, (b) applying a weighted probability to determine whether the second symbol type should be placed in the best location of the unoccupied ones, (c) if, after applying the weighted probability, multiple unoccupied ones of the locations are available to receive the second symbol type, applying, via the processor, a random determination as to which of the multiple unoccupied ones of locations to place the second symbol type." As stated above, neither Bennett nor Gasper include this feature. For this reason, claim 6 is also believed to be allowable over Bennett and Gasper.

### **Conclusion**

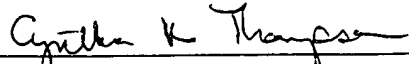
It is the Applicants' belief that all of the claims are now in condition for allowance and action towards that effect is respectfully requested.

Application No. 09/928,116  
Amendment After Final dated December 3, 2003  
Reply to final Office Action dated September 12, 2003

If there are any matters which may be resolved or clarified through a telephone interview,  
the Examiner is requested to contact the undersigned attorney at the number indicated.

Respectfully submitted,

Date: December 3, 2003

  
\_\_\_\_\_  
Cynthia K. Thompson  
Reg. No. 48,655  
Jenkins & Gilchrist  
225 West Washington Street, Suite 2600  
Chicago, IL 60606-3418  
(312) 425-3900  
Attorney for Applicants